

Senate Bill 19
January 18, 2013
Presented by Bill Schenk
Senate Natural Resources Committee

Mr. Chairman and committee members, I am Bill Schenk, Legal Counsel for the Montana Department of Fish, Wildlife & Parks (FWP). I am here in opposition to Senate Bill 19.

The Montana Water Use Act generally requires that all new development or appropriations of water be permitted. However, section 85-2-306, MCA, provides that "a permit is not required before appropriating ground water by means of a well or developed spring . . . (A) with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit ...".

SB 19 simply defines the term "combined appropriation" within the Montana Water Use Act (at §85-2-102) as "an appropriation of water from the same source aquifer from two or more wells or developed springs that are physically connected into the same system." Currently, the term is not defined by statute, but by administrative rule. SB 19 would change very little, as the current rule definition uses the words "manifold together" rather than "physically connected". The bill would maintain the status quo and ensure it could not be altered through rule making.

The problem with the current rule-based definition and the one advanced by SB 19 is that one landowner may drill as many exempt wells as he/or she desires, as long as they do not share the same plumbing. Thus, the maximum flow rate and volume contemplated by the exemption are easily exceeded.

FWP opposes this bill because it does not resolve the long-standing concerns expressed by both conservation advocates and senior water users that the proliferation of exempt wells, particularly in areas of dense residential development, are cumulatively diminishing surface water flows and as a result harming existing, senior water right holders - at least under low flow conditions. I don't believe that anyone who is concerned with the use of the exemption thinks it will be eliminated, nor do I believe anyone would want that.

Many people have worked for years for a compromise that would reduce the amount of the exemption or limit its use. SB 19 is not a compromise. Rather, SB 19 preserves the status quo, by locking in a definition of the term "combined appropriation" and eliminating the possibility that it could be defined through rulemaking.